

EXHIBIT H

ORIGINAL

In the Matter Of:

CHARLES VOLPE vs POLICE DEPARTMENT

19CV2236(JMA)(JMW)

DEPUTY INSPECTOR JOSEPH MASSARO

March 02, 2022



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHARLES VOLPE,

Plaintiff,

Index No. 19CV2236 (JMA) (JMW)

v.

PATRICK RYDER, COMMISSIONER OF THE NASSAU COUNTY
POLICE DEPARTMENT, in his official and individual
capacities; RUSSELL SACKS, SERGEANT IN THE NASSAU
COUNTY POLICE DEPARTMENT, in his individual
capacity; JOSEPH MASSARO, LIEUTENANT IN THE
NASSAU COUNTY POLICE DEPARTMENT, in his
individual capacity; and COUNTY OF NASSAU,

Defendants.

Remote Deposition Upon Oral Examination of:

Deputy Inspector Joseph Massaro

Date: March 2, 2022

Time: 10:00 a.m.

Reported By: CHRISTINE VIGNA

Alliance Court Reporting, Inc.

109 South Union Street, Suite 400

Rochester, New York 14607

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DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS

Q. Were you a detective lieutenant in 2016?

A. No.

Q. What was your rank in 2016?

A. Detective sergeant.

Q. Okay. And you were promoted to deputy inspector when?

A. In March of 2020. I was promoted to captain and designated deputy inspector.

MS. ARNEDOS: Off the record for a second.

(There was a discussion off the record.)

Q. Inspector, in December of 2018, were you designated as detective lieutenant?

A. Yes.

Q. Okay. And what was your command?

A. Medical administration office.

Q. And when did you first get assigned to the MAO?

A. June 2017.

Q. And when you were assigned to that command in June 2017, what were your day-to-day responsibilities?

A. I was responsible for reviewing aided packages, which are injury, illness to officers. I was responsible for reviewing and endorsing motor

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS
2 vehicle accidents of Nassau County police cars. I was
3 responsible for drug testing. I was responsible for
4 conducting sick leave checks.

5 Q. Anything else?

6 A. There are -- there's additional
7 administrative functions. I was responsible for
8 ensuring that injured officers made appropriate
9 appointments with the chief surgeon's office and
10 attended those appointments, that they followed the
11 sick leave policy and procedures.

12 Q. Anything else?

13 A. No.

14 Q. All right. How many years do you have on
15 the force?

16 A. I believe 17 now.

17 Q. All right. Are you familiar with Police
18 Officer -- retired Police Officer Charles Volpe?

19 A. Yes.

20 Q. And how did you first become aware of or
21 familiar with Police Officer Volpe?

22 A. I became aware of him while assigned to
23 medical administration office.

24 Q. And what was Police Officer Volpe's
25 relation to the MAO at that time?

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNE DOS

2 A. There was correspondence written to him
3 notifying him that he was designated as a
4 sick -- chronic sick leave abuser.

5 Q. Okay. Thank you.

6 Was that correspondence sent to his home
7 or was it sent via interdepartmental mail?

8 A. I don't recall the manner in which the
9 correspondence was sent.

10 Q. While Officer Volpe was out on sick leave,
11 did he have access to his department email if you
12 know?

13 A. Department email is accessible while not
14 in department facilities. You can access it outside
15 of the department facilities.

16 Q. To your knowledge, was Officer Volpe ever
17 locked out of his email?

18 A. I do not know.

19 Q. Do you know what command or department
20 would make that decision?

21 MR. MEHNERT: Objection.

22 The witness can answer.

23 Q. Only if you know.

24 A. No.

25 Q. Okay. Do you recall when your last sick

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS
2 leave visit was to Officer Volpe's home?

3 A. December 11, 2018.

4 Q. And what was the purpose of that visit?

5 A. To order Officer Volpe into police
6 headquarters.

7 Q. For what reason?

8 A. For a drug test and medical evaluation.

9 Q. Was Sergeant Sacks with you on that visit?

10 A. Yes.

11 Q. Do you recall what time of day that was?

12 A. Approximately 4:30 p.m.

13 Q. And was that drug test for cause or
14 random?

15 A. That drug test was for cause.

16 Q. And what was the basis for that?

17 A. Could you clarify the question?

18 Q. Yes.

19 What was that cause?

20 A. That cause was for the reasonable
21 suspicion that he was abusing prescription medication.

22 Q. And from what events or situations did
23 that reasonable suspicion arise? What was the basis
24 for that reasonable suspicion?

25 A. I can only go on what I was made aware of.

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS
2 responded to Officer Volpe's home the night of the
3 drug test, did you order him to accompany you and
4 Sergeant Sacks in your vehicle or was he ordered to
5 drive his own vehicle?

6 A. He was told he could drive himself.

7 Q. Okay. And did he do that?

8 A. Yes.

9 Q. Okay. Did you and Sergeant Sacks meet him
10 at headquarters?

11 A. Yes.

12 Q. Okay. And where did Officer Volpe first
13 go when you all arrived at headquarters?

14 A. Can you clarify?

15 Q. Where did you have him report when he got
16 there, was it to the MAO, the chief surgeon's office,
17 someplace else?

18 A. I don't recall if it was MAO, the medical
19 administration office or the chief surgeon's office.

20 Q. Okay. And can you tell me what happened
21 when you and Sergeant Sacks and Officer Volpe first
22 arrived?

23 A. Can you be more specific?

24 Q. Yeah.

25 What was the first thing that happened

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS
2 when you all got to headquarters?

3 A. We walked through the parking lot towards
4 the building.

5 Q. And when you got inside the building?

6 A. We went upstairs to the wing where the
7 medical administration office is. I don't recall what
8 the first thing or office I went into or did was
9 during that time.

10 Q. Okay. At some point after you arrived
11 there, did you direct Officer Volpe into an area where
12 the drug test was going to occur?

13 A. Yes.

14 Q. And was that the men's room?

15 A. Yes.

16 Q. And was the men's room on the floor where
17 the MAO and the chief surgeon's office were located?

18 A. Yes.

19 Q. Who went to the men's room at that time?

20 A. Can you be more specific on the time?

21 Q. When you first went into the men's room
22 with Officer Volpe, who else was there?

23 A. Officer Volpe, Detective Sergeant Sacks
24 and Officer Losquadro.

25 Q. Were you present?

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS

2 A. Yes.

3 Q. And what occurred when you first -- when
4 you first all got into the men's room?

5 A. Officer Volpe was directed to the area
6 where we conduct the drug test.

7 Q. And where was that?

8 A. In the men's room.

9 Q. Where in the men's room?

10 A. Against a wall where there is a shelf
11 where we put the random drug testing for -- for-cause
12 drug testing sample cups and documentation.

13 Q. And was that in the area of the urinals?

14 A. Yes.

15 Q. And was Officer Volpe given any direction
16 at that time?

17 A. Yes.

18 Q. And what was that?

19 A. Can you be more specific?

20 Q. What direction was Officer Volpe given at
21 the point where he was directed to the wall with the
22 shelf?

23 A. He was directed on the procedure to submit
24 to the drug test.

25 Q. And what was that procedure?

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS

2 A. The procedure was to take the sample cup,
3 utilize the sample cup to urinate into. And then when
4 he was done, he would return that sample cup to the
5 work space that the split sample were at.

6 Q. What is a split sample?

7 A. Within our drug testing supplies there's
8 what's called a split specimen cup. Therefore, there
9 is a large cup to capture the urine, two smaller cups
10 that the sample is broken down into, as well as a
11 sample bag in that large cup.

12 Q. And whose responsibility is it to transfer
13 the urine from the large specimen cup to the smaller
14 specimen cups?

15 A. I don't know that it's anyone's
16 responsibility to transfer it. It is on the medical
17 administration office to ensure that it's successfully
18 transferred.

19 Q. So would that be done by a police
20 department employee or would it be done by Officer
21 Volpe?

22 A. In this case -- could you be more specific
23 to -- in generalities or in this case?

24 Q. Well, first in generalities.

25 A. It could be done by either a member being

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS
2 paperwork. One copy goes into the sample bag,
3 specimen bag that's now labeled A with the A vial and
4 they are put in there. The other specimen bag is
5 already labeled B. The paperwork is put into the B
6 specimen bag and the B vial is then put into that.

7 In the presence of the subject, the
8 medical administration officer will remove the
9 adhesive covering from the specimen bag and seal it in
10 front of the subject ensuring that it's properly
11 sealed and nothing could fall out of it.

12 Q. Understood. Thank you.

13 Okay. Were all of these procedures
14 followed during the drug test of Officer Volpe?

15 A. Yes.

16 However, the first attempt to urinate was
17 unsuccessful. Therefore, he was given an opportunity
18 to go back to the office to await the need to urinate.

19 Therefore, he was told to dispose of the
20 split specimen cup and the two smaller vials that were
21 in that split specimen cup in the garbage. The
22 paperwork was still intact. The A and B labels were
23 still on that paperwork.

24 Q. Okay.

25 A. That paperwork was brought back with him

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNELOS
2 to the medical administration office. So thereby, the
3 split specimen cup could not be tainted and we
4 wouldn't leave it open for environmental conditions to
5 taint what is in that cup.

6 The next attempt would require him to
7 choose at his discretion whatever other split specimen
8 cup from the shelf in the MAO and then return to the
9 bathroom to attempt to urinate again.

10 Q. And did that occur, the second attempt?

11 A. The second attempt did occur.

12 Q. And was that successful?

13 A. No.

14 Q. And was that same procedure followed with
15 regard to discarding the cup and the vials?

16 A. The second attempt I instructed him to
17 dispose of the vials and the cup in the red biohazard
18 bin that is on the floor of the men's bathroom, which
19 is right next to the general waste garbage can in that
20 bathroom.

21 Officer Volpe, on the second attempt, did
22 not place the cups into the red biohazard bin as
23 instructed. He placed it on top of the overflowing
24 garbage on top of paper towels.

25 Q. And did you say anything in response to

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS
2 that?

3 A. As I was exiting the bathroom, I observed
4 that there was an unknown substance in that cup.

5 Q. And what did you do in response to that?

6 A. I stated to Officer Volpe, "I thought you
7 said you didn't spit in the cup."

8 Q. And did he have a response?

9 A. Officer Volpe said, "I didn't."

10 And Officer Losquadro said, "What is the
11 big deal if he spit in the cup? It's not going to
12 affect the test."

13 Q. Did you respond to Officer Losquadro?

14 A. Not that I recall.

15 Q. Did you retrieve the cup which you believe
16 Officer Volpe spit in from the trash?

17 A. Yes.

18 Q. When you did that, were there other
19 specimen cups in the trash?

20 A. I don't know. There was at least the two
21 vials that he threw out in addition to the larger
22 urine capture cap.

23 Q. I understand that.

24 I'm asking, were there other cups not
25 belonging to Officer Volpe?

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNELOS

2 A. No. Not that I know of.

3 Q. Okay. So were you able to identify that
4 particular cup as the one that Officer Volpe put on
5 top of the paper towels in the trash can?

6 A. Yes.

7 Q. Okay. Take me through what happened next.

8 A. He was instructed to go back to the
9 medical administration office. And I contacted my
10 superior.

11 Q. And who was that?

12 A. At the time, it was Chief Keechant Sewell.

13 Q. Can you spell the last name?

14 A. S-E-W-E-L-L.

15 Q. And what was the reason for your
16 contacting Chief Sewell?

17 A. To notify her of the fact that I had heard
18 Officer Volpe in the bathroom pulling up phlegm and
19 coughing up from his throat what sounded like phlegm
20 and mucus and I had heard him spit. And upon leaving
21 the bathroom, I observed his cup on the top of the
22 garbage can with an unknown substance.

23 Q. And did Chief Sewell have any response to
24 what you told her?

25 A. Yes.

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS

2 Q. And what was that?

3 A. I don't recall the exact response. But
4 the result was that two supervisors from the internal
5 affairs unit responded to the medical administration
6 office.

7 Q. And what was the purpose of that?

8 A. I can't speak for what -- the purpose of
9 her sending those supervisors up.

10 Q. Okay. At any point during the time after
11 the first attempt and the second attempt, did Officer
12 Volpe ask for water?

13 A. Not that I recall.

14 Q. At any point after the first attempt and
15 after the second attempt, did anyone from MAO give
16 Officer Volpe water?

17 A. Upon arrival at the medical administration
18 office originally, I gave Officer Volpe -- excuse me
19 one second. I'm just trying to recall.

20 Q. Sure. Yeah.

21 A. After the first attempt when Officer Volpe
22 was unable to provide a sample, I told him that I
23 would get him a bottle of water. And I offered
24 Officer Losquadro a bottle of water also.

25 Q. And did Officer Volpe drink that water?

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS

2 A. To my knowledge, yes. That was a
3 16.9-ounce bottle of water assuming Kirkland hasn't
4 changed the size of their bottles.

5 Q. Okay. What about after the second
6 attempt, was Officer Volpe given more water?

7 A. Not that I know of.

8 Q. And was there a point where Officer Volpe
9 indicated to you or someone else that he would make a
10 third attempt to give you the sample?

11 A. A third attempt was made. I don't
12 recall -- when you say he indicated, I don't recall
13 the origination of the third attempt, if we asked him
14 if he was ready or if he told us that he was ready.

15 Q. Okay. In any event, there was a third
16 trip to the men's room?

17 A. Yes.

18 Q. Okay. And before moving to the men's
19 room, did Officer Volpe take another specimen cup,
20 split specimen cup?

21 A. Before the third attempt, I had instructed
22 Officer Losquadro or I informed Officer Losquadro that
23 on the third attempt Officer Volpe was not going to be
24 able to face the urinals. And I had told him the
25 reason for that and I had explained to him. And then

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS
2 we walked, I believe, from my section of the medical
3 administration office towards Officer Volpe where he
4 was given the opportunity. And he did select a third
5 specimen cup.

6 Q. And what was the reason given to Officer
7 Losquadro for Officer Volpe not being able to face the
8 urinals?

9 A. I don't recall if I gave a reason to
10 Officer Losquadro. I don't recall if I gave the
11 reason.

12 Q. So you may have just informed him that
13 Officer Volpe would not be permitted to face the
14 urinals?

15 A. To ensure that we were able to observe or
16 I was able to observe the sample being collected.

17 Q. Was there a window in that men's room?

18 A. Yes.

19 Q. And how did that window open? Did it open
20 from the bottom, the top, slide up and down or open
21 out?

22 A. If you don't mind, I'll describe it.

23 Q. That would be fine.

24 A. I'd say it opened from the bottom.

25 Q. I understand.

DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS

A. There were two hinges on the side. The bottom of the window stays where it is and the top of the window, which is frosted glass, will lean in towards the bathroom. So, therefore, it's tilted in towards the bathroom from the top and slanted down towards the window frame at the bottom where the window meets the window frame.

Q. Got it. Thank you.

About how high up from the floor was the window?

A. The window is probably about 18-inches high. So I would assume it starts at about no less than 3 feet and probably goes up to almost 4 and a half feet off the ground.

Q. So the bottom of the window was how high?

A. Probably 3 and a half feet, which is just at -- it's just essentially a closed window at that point.

Q. Right. I understand.

Where was the window relative to the urinals?

A. The urinals are against the wall. When you enter the bathroom, there are, I believe, three bathroom stalls on the left side. After you get through a double door -- I apologize. There is a

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS
2 double door -- then you get to the three bathroom
3 stalls and then three urinals on the left side of that
4 wall, which is facing north. The bathroom window is
5 facing east in the center of the eastern wall.

6 Q. So the orientation between the window and
7 the urinals, am I correct that if you're looking at
8 the window, the urinals would be on your left?

9 A. Yes.

10 Q. Okay. Now, did you instruct Officer Volpe
11 on where to stand to give you a sample on that third
12 attempt?

13 A. I instructed Officer Volpe that he only
14 couldn't stand and face the urinals which would block
15 our view from witnessing the sample and specimen cup.
16 I instructed him that he could face any other
17 direction he would like. That's it.

18 Q. Okay. Was Officer Volpe ever instructed
19 to stand in front of the window specifically?

20 A. Absolutely not.

21 Q. Did Officer Volpe face the window when he
22 was giving -- attempting to give that sample?

23 A. Yes. He faced the window.

24 Q. Did Sergeant Sacks ever instruct Officer
25 Volpe to face the window?

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNEDOS

2 A. No.

3 Q. Just to back up a moment. On that third
4 attempt, who was in the men's room?

5 A. Who was in the men's room, on my left
6 shoulder and his right shoulder, was Officer
7 Losquadro. And then next to Officer Losquadro was
8 Detective Sergeant Sacks, Detective Sergeant Choo and
9 his rank at that time was Detective Sergeant Belistry.

10 Q. And were Detective Sergeant Choo and
11 Belistry the supervisors from IAU?

12 A. Yes.

13 Q. Did everyone in the men's room have a full
14 view of Officer Volpe to your knowledge?

15 A. To my knowledge, no.

16 Q. Who had view of Officer Volpe?

17 A. I know that I had view of Officer Volpe.
18 I know that Officer Losquadro had view of Officer
19 Volpe. I can't speak for anyone else.

20 Q. Did anyone that was present in the men's
21 room for that third attempt go into a stall?

22 A. Not that I know of.

23 Q. On that third attempt, did Detective Sacks
24 say anything at all to Officer Volpe?

25 A. No. Not that I know of.

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNELOS

2 Q. On that third attempt in the men's room,
3 did either of the supervisors from internal affairs
4 speak to Officer Volpe?

5 A. Not that I know of.

6 Q. Did Officer Losquadro speak at all while
7 you were in the men's room for that third attempt?

8 A. Not that I recall. Or I don't recall
9 anything he might have said if he did. And
10 regardless, I don't recall.

11 But are we referring to the attempt of
12 gaining that specimen or after when the sample is
13 being split up?

14 Q. I'm just speaking first in general while
15 you were all in the men's room.

16 A. No. The only one that spoke anything to
17 him was myself.

18 Q. Okay. Was Officer Volpe able to give a
19 sample on that third attempt?

20 A. Yes.

21 Q. And was the procedure for splitting up the
22 sample, labeling the tubes, labeling the bags,
23 etcetera, followed?

24 A. Yes. I was the one with Officer Volpe.
25 And Officer Losquadro witnessing that conducted, the

1 DEPUTY INSPECTOR JOSEPH MASSARO - BY MS. ARNE DOS

2 Q. At any point after the evening of the drug
3 test. Let me ask a different question.

4 At some point did you receive
5 communication, written or otherwise from the chief
6 surgeon's office that Officer Volpe could return on
7 restricted duty?

8 A. We're still talking about after the
9 December 11, 2018?

10 Q. Correct.

11 A. No. I don't recall him being ordered back
12 to work RA at that time.

13 Q. What about before the drug test, do you
14 recall it then?

15 A. I was not in the medical administration
16 office. But in April of 2017, he was found fit for
17 restricted assignment.

18 Q. That was before you got there?

19 A. Yes.

20 Q. And do you have any knowledge of whether
21 Officer Volpe returned restricted assignment?

22 A. It's my understanding that between his
23 October 4th of 2016, date and through 2018 he did not
24 return to work in any capacity.

25 Q. And while you were assigned to the MAO,

A C K N O W L E D G M E N T

I, Deputy Inspector Joseph Massaro,
declare, swear and aver that I have read my testimony
contained herein and that my answers are true and
correct, with any exceptions noted on the errata
sheet, under penalty of perjury.

Deputy Inspector Joseph Massaro

I certify that this transcript was signed
in my presence by Deputy Inspector Joseph Massaro on
the ____ day of _____, 2022.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office of _____
on this ____ day of _____, 2022.

Notary Public

My Commission Expires:

C E R T I F I C A T I O N
STATE OF NEW YORK:
COUNTY OF MONROE:

I, CHRISTINE VIGNA, do hereby certify that
the foregoing testimony was duly sworn to; that I
reported in machine shorthand the foregoing pages of
the above-styled cause, and that they were produced by
computer-aided transcription (CAT) under my personal
supervision and constitute a true and accurate record
of the testimony in this proceeding;

I further certify that the witness does
request to review the transcript;

I further certify that I am not an
attorney or counsel of any parties, nor a relative or
employee of any attorney or counsel connected with the
action, nor financially interested in the action;

WITNESS my hand in the City of Rochester,
County of Monroe, State of New York.



CHRISTINE VIGNA

Freelance Court Reporter and

Notary Public No. 01KE6093245

in and for Monroe County, New York